

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JIMMY AVILA; MEZIE ODUKA,

Plaintiffs,

-against-

DANISHA DAVIS; LINDSEY M.
BLACKWELL; CITY OF NEW YORK; NYC
DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT;
JANE DOE; JOHN DOE; SYMONE
ELIZABETH SYLVESTER; 1412 COL LLC;
BASICS, INC.; JSAF MANAGEMENT LLC;
ADULT PROTECTIVE SERVICES; NYC
DEPARTMENT OF HOMELESS SERVICES;
CITY FHEPS; BREAKING GROUND;
HARLEM YMCA; ANDREW BRAIN
BITTENS ESQ.; BRONXWORKS; OFFICE OF
MENTAL HEALTH,

Defendants.

25 Civ. 3316 (PAE) (KHP)

ORDER

PAUL A. ENGELMAYER, United States District Judge:

Plaintiffs Jimmy Avila and Mezie Oduka, proceeding *pro se*, bring this action alleging that Defendants violated their rights under the Americans with Disabilities Act, the Fair Housing Act, and state law. By order dated April 25, 2025, the Court granted plaintiffs' request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees. For the reasons set forth below, the Court (1) dismisses plaintiffs' claims against the agencies of the City of New York; and (2) orders service on the remaining named defendants.¹

¹ Plaintiffs name John and Jane Doe defendants. Because plaintiffs do not provide any identifying information with respect to these defendants or allege any facts describing how these defendants were involved in the events giving rise to their claims, the Court declines to issue an order under *Valentin v. Dinkins*, 121 F.3d 72, 76 (2d Cir. 1997), at this time.

I. Discussion

A. Municipal Liability

Plaintiffs bring claims against the New York City Department of Housing Preservation and Development, the New York City Department of Homeless Services, and the Adult Protective Services and City Family Homelessness and Eviction Prevention Supplement, programs administered by the New York City Human Resources Administration. Plaintiffs' claims against these defendants must be dismissed because an agency of the City of New York is not an entity that can be sued. N.Y. City Charter ch. 17, § 396 (“[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.”); *Jenkins v. City of New York*, 478 F.3d 76, 93 n.19 (2d Cir. 2007); *see also Emerson v. City of New York*, 740 F. Supp. 2d 385, 396 (S.D.N.Y. 2010) (“[A] plaintiff is generally prohibited from suing a municipal agency.”).

In light of plaintiffs' *pro se* status, the Court will construe any allegations asserted against these defendants as being asserted against the City of New York, which is also a defendant in this action.

B. Service

Because plaintiffs have been granted permission to proceed IFP, they are entitled to rely on the Court and the U.S. Marshals Service to effect service.² *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the Complaint is filed, plaintiffs are proceeding IFP and could not have effected service until the Court reviewed the Complaint and ordered that any summonses be issued. The Court therefore extends the time to serve until 90 days after the date any summonses issue.

serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the Court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

To allow plaintiffs to effect service on the remaining defendants through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each defendant. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon the defendants.

If the Complaint is not served within 90 days after the date summonses are issued, plaintiffs should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012).

This order of service supersedes Magistrate Judge Parker’s directive that plaintiffs serve a copy of that order and the Complaint on defendants. *See* Dkt. 10.

CONCLUSION

The Court dismisses plaintiffs’ claims against the New York City Department of Housing Preservation and Development, the New York City Department of Homeless Services, and the Adult Protective Services and City Family Homelessness and Eviction Prevention Supplement. *See* N.Y. City Charter ch. 17, § 396.

The Clerk of Court is respectfully directed to issue a summons for each remaining defendant, to complete the USM-285 form with the address for each defendant, and to deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is further directed to mail a copy of Magistrate Judge Parker’s May 5, 2025 order (ECF 10) to defendants at the addresses provided on the following two pages, and to mail an information package to plaintiffs.

SO ORDERED.

Dated: May 14, 2025
New York, New York

A handwritten signature in black ink, reading "Paul A. Engelmayer". The signature is written in a cursive, slightly slanted style.

PAUL A. ENGELMAYER
United States District Judge

SERVICE ADDRESS FOR EACH DEFENDANT

1. The City of New York
100 Church Street
New York, NY 10007
2. Symone Elizabeth Sylvester
100 Gold Street
New York, NY 10038
3. JSAF Management LLC
164 Suffolk Street
New York, NY 10002
4. BASIC, Inc.
300 East 175th Street
Bronx, NY 10457
5. 1412 Col LLC
1548 East 2nd Street
Brooklyn, NY 11230
6. Harlem YMCA
180 West 135th Street
New York, NY 10030
7. Andrew Brain Bittens
747 3rd Avenue
New York, NY 10017
8. BronxWorks
630 Jackson Avenue
Bronx, NY 10455
9. New York State Office of Mental Health
44 Holland Avenue
Albany, NY 12229
10. Danisha Davis
Clerk of County
1118 Grand Concourse
Bronx, NY 10456
11. Lindsay M. Blackwell
One Battery Park Plaza, 28th Floor
New York, NY 10004

12. Breaking Ground
505 8th Avenue, 5th Floor
New York, NY 10018